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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,582	11/12/2003	Ahmad Jalali	000229C1	8986

23696 7590 06/14/2005

Qualcomm Incorporated
Patents Department
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EXAMINER	
BRITT, CYNTHIA H	
ART UNIT	**PAPER NUMBER**
2133	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/712,582	JALALI ET AL.	
	Examiner	Art Unit	
	Cynthia Britt	2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-13 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 12 November 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 11/12/03.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-13 are presented for examination.

Priority

The claim of priority under 35 U.S.C. 120 in the present application as a continuation claiming priority to Patent Application No. 09/549,017 (U.S. Patent No. 6,694,469) is acknowledged.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 11/12/03 has been considered by the examiner. Form 1449 has been signed and returned with this office action.

Drawings

The drawings were received on 11/12/03. These drawings are acceptable.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims11-22 of U.S. Patent No. 6,694,469. Although the conflicting claims are not identical, they are not patentably distinct from each other because as shown in the chart below:

Claim	Present Application.	Claim	U.S. Patent No 6,694,469
1	An apparatus for retransmitting signals, comprising: ***means for decoding*** contents of a unit of received signal; ***means for generating*** a feedback signal; ***means for determining a quality metric*** of said unit of received signal; ***means for instructing*** said means for generating said feedback signal to generate said feedback signal in	11	An apparatus configured to retransmit signals in a communication system, comprising: ***a decoder*** configured to decode contents of a unit of received signal; ***a first feedback signal generator*** configured to generate a first feedback signal; ***a first processor configured to determine a quality metric*** of said unit of signal; and instruct said feedback signal generator to generate a feedback signal in accordance with said quality metric;

	accordance with said quality metric; and ***means for preventing decoding*** of said unit of received signal if an indication received on a control channel indicates that said unit of received signal is not to be decoded.		and a preamble detector configured to detect and decode a preamble of said unit of signal; and wherein said ***first processor is further configured to prevent decoding*** of said unit of signal if said preamble indicates that said unit of signal is not to be decoded.
2	The apparatus of claim 1, wherein said unit of ***received*** signal is a packet.	12	The apparatus of claim 11 wherein the unit of signal is a packet.
3	The apparatus of claim 1, wherein said quality metric is a cyclic redundancy check.	13	The apparatus of claim 11 wherein the quality metric is a cyclic redundancy check.
4	An apparatus configured to retransmit signals, comprising: ***means for decoding*** contents of a unit of received signal; ***means for generating*** a feedback signal; ***means for determining a quality***	11	An apparatus configured to retransmit signals in a communication system, comprising: ***a decoder*** configured to decode contents of a unit of received signal; ***a first feedback signal generator*** configured to generate a first feedback signal; ***a first processor configured to***

	metric of said unit of received signal; ***means for instructing*** said means for generating said feedback signal to generate said feedback signal in accordance with said quality metric; ***means for detecting*** a preamble of said unit of received signal; and ***means for preventing*** decoding of said unit of received signal if said preamble indicates that said unit of received signal is not to be decoded.		***determine*** a quality metric of said unit of signal; ***and instruct said feedback signal generator*** to generate a feedback signal in accordance with said quality metric; and ***a preamble detector*** configured to detect and decode a preamble of said unit of signal; and wherein said ***first processor is further configured to prevent decoding*** of said unit of signal if said preamble indicates that said unit of signal is not to be decoded.
5	The apparatus of claim 4, wherein said contents of said unit of ***received*** signal are ***decoded*** in accordance with information carried on a control channel.	14	The apparatus of claim 11 wherein said ***decoder decodes*** contents of said unit of signal in accordance with information carried on a control channel.
6	The apparatus of claim 4, wherein said feedback signal is a burst of energy.	15	The apparatus of claim 11 wherein said ***first*** feedback signal is a burst of energy.
7	The apparatus of claim 6, wherein said burst of energy is a bit.	16	The apparatus of claim 15 wherein said burst of energy is a bit.

8	The apparatus of claim 4, wherein said feedback signal contains no energy.	17	The apparatus of claim 11 wherein said ***first*** feedback signal contains no energy.
9	The apparatus of claim 8, wherein said first feedback signal is a bit.	18	The apparatus of claim 17 wherein said first feedback signal is a bit.
10	The apparatus of claim 4, further comprising ***means for transmitting*** said feedback signal at a determinable time instant.	19	The apparatus of claim 11 wherein ***the first processor is further configured to transmit*** said first feedback signal at a determinable time instant.
11	The apparatus of claim 10, wherein said determinable time instant is fixedly delayed from an event time instant, said event time instant being selected from a group consisting of: a time instant when said unit of signal is received; a time instant when a determination of whether said unit of signal is to be demodulated is made; a time instant when said unit of signal is demodulated; and a time instant when said quality metric is computed.	20	The apparatus of claim 19 wherein said determinable time instant is fixedly delayed from an event time instant, said event time instant being selected from a group consisting of: a time instant when said unit of signal is received; a time instant when a determination as to whether said unit of signal is to be demodulated is made; a time instant when said unit of signal is demodulated; and a time instant when said quality metric is computed.

12	An apparatus configured to retransmit signals, comprising: ***means for decoding*** contents of a unit of received signal; ***means for generating*** a first feedback signal; ***means for determining*** a quality metric of said unit of received signal; ***means for instructing*** said means for generating said first feedback signal to generate said first feedback signal in accordance with said quality metric; ***means for generating*** a second feedback signal; and ***means for instructing*** said means for generating said second feedback signal to generate said second feedback signal in accordance with a sequence	21	An apparatus configured to retransmit signals in a communication system, comprising: ***a decoder*** configured to decode contents of a unit of received signal; ***a first feedback signal generator*** configured to generate a first feedback signal; ***a first processor configured to determine*** a quality metric of said unit of signal; ***and instruct said feedback signal generator*** to generate a feedback signal in accordance with said quality metric; ***a second feedback signal generator*** for generating a second feedback signal; and ***a second processor configured to instruct*** said second feedback generator to generate a second feedback signal in accordance with a

	number of said unit of ***received*** signal when a retransmission of said signal in accordance with said quality metric is declared a failure.		sequence number of said unit of signal when said retransmission of said signal in accordance with said quality metric is declared a failure.
13	The apparatus of claim 12, further comprising means for declaring said retransmission of said signal in accordance with said quality metric a failure when: said unit of signal is not received within a predetermined number of retransmissions; or said unit of signal is not received within a predetermined period measured from a first transmission of said unit of signal; or said unit of signal is not received within a predetermined period measured from transmission of a request signal corresponding to said unit of signal.	22	The apparatus of claim 21 further comprising means for declaring said retransmission of said signal in accordance with said quality metric a failure when: said unit of signal is not received within a predetermined number of retransmissions; or said unit of signal is not received within a predetermined period measured from a first transmission of said unit of signal; or said unit of signal is not received within a predetermined period measured from transmission of a request signal corresponding to said unit of signal. These two claims are identical.

As per claim 1 of the present application, and claim 11 of U. S. Patent No. 6,694,469, the only difference between the languages in the two claims is that the instant application recites "means for" and the U.S. Patent recites a specific device to accomplish the same result. Therefore, claim 1 is not patentably distinct from claim 11 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 2 of the present application and claim 12 of U. S. Patent No. 6,694,469, the present application merely specifies that the "received" signal is a packet. Since the independent claim recites a "received signal" claim 2 is not patentably distinct from claim 12 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 3 of the present application and claim 13 of U. S. Patent No. 6,694,469, these two claims are identical. Therefore, claim 3 is not patentably distinct from claim 13 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 4 of the present application and claim 11 of U. S. Patent No. 6,694,469, again, as in claim 1 of the instant application, the only difference between the languages in the two claims is that the instant application recites "means for" and the U.S. Patent recites a specific device to accomplish the same result. Therefore, claim 4 is not patentably distinct from claim 11 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 5 of the present application and claim 14 of U. S. Patent No. 6,694,469, in both claims, the contents of the signal are decoded in the same manner. Therefore, claim 5 is not patentably distinct from claim 14 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 6 of the present application and claim 15 of U.S. Patent No. 6,694,469, the only difference in these claims is that the U.S. Patent specifies the feedback signal as 'first'. Since the U.S. Patent is claiming a specific device, the term first is necessary to distinguish over another (second) device. Therefore, claim 6 is not patentably distinct from claim 15 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 7 of the present application and claim 16 of U. S. Patent No. 6,694,469, these two claims are identical. Therefore, claim 7 is not patentably distinct from claim 17 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 8 of the present application and claim 17 of U.S. Patent No. 6,694,469, the only difference in these claims is that the U.S. Patent specifies the feedback signal as 'first'. Since the U.S. Patent is claiming a specific device, the term first is necessary to distinguish over another (second) device. Therefore, claim 8 is not patentably distinct from claim 17 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 9 of the present application and claim 18 of U. S. Patent No. 6,694,469, these two claims are identical. Therefore, claim 9 is not patentably distinct from claim 18 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 10 of the present application and claim 19 of U. S. Patent No. 6,694,469, again, as in claim 1 of the instant application, the only difference between the languages in the two claims is that the instant application recites "means for" and the U.S. Patent recites a specific device to accomplish the same result. Therefore, claim 10 is not patentably distinct from claim 19 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 11 of the present application and claim 20 of U. S. Patent No. 6,694,469, these two claims are identical. Therefore, claim 11 is not patentably distinct from claim 20 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 12 of the present application, and claim 21 of U. S. Patent No. 6,694,469, again as in claims 1 and 4, the only difference between the languages in the two claims is that the instant application recites "means for" and the U.S. Patent recites a specific device to accomplish the same result. Therefore, claim 12 is not patentably distinct from claim 21 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

As per claim 13 of the present application and claim 22 of U. S. Patent No. 6,694,469, these two claims are identical. Therefore, claim 13 is not patentably distinct from claim 22 of U. S. Patent No. 6,694,469 since the instant claim is obvious over, or anticipated by, the earlier claim.

Since the primary differences in the claims of the present application and the claims of U.S. Patent No. 6,694,469 are that the instant application recites "means for" and the U.S. Patent recites specific devices. This shows that the claims in the instant application are broader in scope than the U.S. Patent, (which recites a specific device to accomplish the same result). It would therefore have been obvious to a person having ordinary skill in the art at the time this invention was made to have used the specific devices as cited in claims 11 and 21 of the U.S. Patent to achieve the recited means of claims 1, 4, and 12 of the instant application. This would have been obvious, as a person having ordinary skill in the art would have known to use the following:

(Claim 1 of the instant application)

a decoder to decode

a feedback signal generator to generate a feedback signal

a processor to determine a quality metric

a processor to prevent decoding

(Claim 4 of the instant application)

a decoder to decode

a feedback signal generator to generate a feedback signal

a processor to determine a quality metric

a processor to instruct the feedback signal generator

a preamble detector to detect a preamble

a processor to prevent decoding

(Claim 12 of the instant application)

a decoder to decode

a feedback signal generator to generate a feedback signal

a processor to determine a quality metric

a processor to prevent decoding

a processor to instruct the feedback signal generator

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

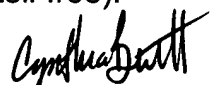
As such, these differences in the claim language do not cause the claims to be patentably distinct from the parent application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Britt whose telephone number is 571-272-3815. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on 571-272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cynthia Britt
Examiner
Art Unit 2133